IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL No 6 of 2003
to
TAX APPEAL No 18 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

TOWER CONSTRUCTION COMPANY

Versus

I.T. OFFICER

Appearance:

1. TAX APPEAL No. 6 of 2003
MR SN SOPARKAR, Sr.Advocate with
MR TUSHAR P HEMANI for Appellant
MR MANISH R BHATT for Respondent

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE A.L.DAVE

Date of decision: 03/02/2003

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI)

#. Admit. Mr. Manish R. Bhatt waives service of notice for the respondent.

#. The following substantial question of law arises from the order of the Tribunal.

"Has the Tribunal committed an error in exercise of its jurisdiction in setting aside the appellate order of the Commissioner of Income-tax (Appeals) without taking into consideration the reasons for which that order was made?"

All these appeals are finally heard together at the request of the learned counsel appearing for both the sides.

#. In all these matters, the Revenue had preferred appeals before the Tribunal against the decision of the CIT (Appeals), who had set aside the orders of the Assessing Officer. The Tribunal, after reproducing the orders of the Assessing Officer and CIT (Appeals), and referring to the earlier order of the Tribunal in Samir Builders' case, in para 9 of its order, held that, the case under appeal was squarely covered by the decision in Samir Builders. In para 10 of the order, the Tribunal allowed the appeal by observing as under.

"After giving a deep and thoughtful consideration to the entire material and judgments cited/referred, we are of the considered opinion that order of AO is required to be upheld. Therefore, we set aside the order of CIT (Appeals) and confirm the order of the A.O."

In para 9 of the impugned order, it is merely stated that the case under appeal was squarely covered by the decision of the Samir Builders which was the earlier decision of the Tribunal.

#. The CIT (Appeals) had considered the decision in Samir Builders which was pointed out from the order dated 29.6.1994 made by the CIT (Appeals) in Appeal No. CIT (A)VII/Wd. 7(1)/7/88/89. In para 2 of that order, the CIT (Appeals), in terms, considered the case of Samir Builders and held that the reliance placed thereon by the Assessing Officer was not correct as it was a case where no business was carried on and all the partners of the firm were mixed AOPs constituted out of permutation and

combination of partners' family groups whereas in the present case, business had been carried on as well as the constitution of the appellant partnership firm did not consist solely of BOIs but there were Individual and HUF partners also. He then proceeded to give further reasons for ultimately holding that the firm was genuine and that the registration could not have been refused and directed the Assessing Officer to grant registration to the firm.

#. Despite the detailed reasoning given by the CIT (Appeals) for holding that the earlier decision of the Tribunal in Samir Builders did not apply in these matters, the Tribunal has, without even referring to that part of the reasoning which went to the root of the matter, set aside the order of the CIT (Appeals) simply by observing that it had given deep and thoughtful consideration and that it was of the considered opinion that the order of the A.O. was required to be upheld.

#. It is a settled legal position that the Income-tax Appellate Tribunal is a fact finding Tribunal and it is necessary for the Tribunal that every fact for and against the assessee must have been considered with due care by it and it must have given its finding in a manner which would clearly indicate what were the questions which arose for determination, what was the evidence pro and contra in regard to each one of them and what were the findings reached on the evidence on record before it.(See Omar Salay Mohamed Sait V. Commissioner of Income-tax, 37 ITR 151 S.C.).

#. It is evident from the order of the Tribunal that it has not considered the reasoning of the CIT (Appeals) on vital finding given by that appellate authority before setting it aside. The impugned orders made by the Tribunal cannot, therefore, be sustained and are hereby set aside with a direction to the Tribunal to reconsider the matter on merits and take a fresh decision in all these matters expeditiously in accordance with law. The appeals are accordingly allowed. There shall be no order as to costs.

We have refrained from commenting on the correctness or otherwise of the order of the Commissioner of Income-tax (Appeals) since it would be for the Tribunal to reconsider the appeals and take its own decision in respect thereof.

[R.K. ABICHANDANI, J.]

[A.L. DAVE, J.]

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